



JOAN W. HOWARTH
Dean

WRITTEN TESTIMONY OF JOAN W. HOWARTH
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MICHIGAN STATE HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE MARK MEADOWS, CHAIRMAN

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Representative Meadows and Members of the Judiciary Committee:

Thank you for your leadership in making public defense reform a legislative priority. I also thank Representative Constan and Representative Amash, Chair and Member of the House Subcommittee on Indigent Defense, for their interest in this issue.

My name is Joan Howarth. I am speaking as an attorney whose legal career started in criminal defense in 1980, and included service as a Deputy State Public Defender in California. I have been a full-time law professor since 1989, having taught in California and Nevada. I moved to Michigan in July 2008 to take the position I now hold as the dean of the Michigan State University College of Law. In this testimony I speak only for myself. I do not speak for either the Michigan State University College of Law or Michigan State University.

Defense attorneys have the crucial work of upholding constitutional rights, but the state is ultimately responsible for ensuring that the constitutional right to counsel is upheld. Having been a public defender and having practiced in criminal courts in California and Nevada, I believe that Michigan's public defense system is in need of long-overdue reform. I support the Campaign for Justice and State Bar of Michigan goals – adequate state funding for public defense and a system that meets and enforces the Eleven Principles of a Public Defense Delivery System.

As you know, the Sixth Amendment of the United States Constitution states that "in all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." The U.S. Supreme Court, in *Gideon v. Wainwright* (1963), recognized that:

[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.

In other words, in *Gideon v. Wainwright* the Supreme Court reaffirmed that our “fundamental and essential” constitutional rights cannot be permitted to be empty words on a piece of paper. Our constitutional rights must be meaningful in the real world of actual people accused of too real crimes. The Supreme Court has repeatedly affirmed that the constitutional right to counsel means a right to *effective* representation. Similarly, the right to counsel in Article I, section 20 of the Michigan Constitution should be more than an imaginary or aspirational principle.

As noted in the National Legal Aid and Defender Association’s report released last year, Michigan’s public defense system is among the worst in the country when it comes to administering and funding the right to counsel for adults and children. Individuals facing charges are meeting their attorneys for the first time just minutes before court hearings, often in crowded hallways; some children are waiving counsel without being informed by an attorney assigned to them what the right to counsel means; and the list goes on.

Providing a system for adequate defense is not just an issue of constitutional rights and fundamental fairness. Providing ineffective and inadequate defense to poor people accused of crimes causes profound problems that extend far beyond the immediate outcomes of court proceedings. Adequate public defense is also a matter of pragmatics, efficiency, and public safety. Michigan residents need a system that is more cost effective and that does not waste taxpayer dollars in wrongful conviction lawsuits, unnecessary appeals, and incarceration that would have been avoided with adequate counsel. We need a system in which innocent people are not convicted because of ineffective defense, and in which guilty people do not continue to endanger their communities.

Failure to provide meaningful access to stated constitutional rights erodes respect for the rule of law. Those of us who revere our Constitution and legal system and who are deeply committed to the rule of law sometimes fail to understand the destructive and dangerous impact when constitutional guarantees are experienced as empty promises. Unfortunately, there are many examples around the globe of constitutional provisions whose glorious words are empty promises. Article 35 of the Constitution of the People’s Republic of China, for example, which guarantees citizens of China “freedom of speech, of the press, of assembly, of association, of procession and of demonstration,” helps me to remember that the wider the gap between the rights on paper and the rights that are delivered, the greater the risk that the law and the legal system will be held in contempt. We properly pride ourselves in having a constitutional system in which our constitutional rights are real for everyone, not just the wealthy or the powerful.

Every time an indigent defendant or juvenile with a constitutional right to effective assistance of counsel faces incarceration having barely met an attorney, respect for the rule of law is diminished. Respect for and faith in our laws can diminish for everyone who knows that person

– family, teachers, neighbors, pastors, whole communities. Crime reduction requires increased respect for law, not less.

Ensuring that everyone, regardless of how much money one has or what side of a county line one lives on, receives effective defense representation is essential to upholding our core values of fairness and justice. I hope that you will support legislation that addresses this issue.

Those of us who revere our Constitution face the ongoing work of making its principles real in all of our communities. Thank you very much for taking on that task, and for addressing your time and attention to this important matter.

